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The HONORABLE LONNY R. SUKO

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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

10 EDWARD J. CARCICH and JENNIE
11 VEGA-CARCICH,

No.: 10-429-LRS

12 Plaintiffs,

RESPONSE IN OPPOSITION TO
MOTION FOR TEMPORARY
RESTRAINING ORDER

13 v.

14 CITIMORTGAGE,

Hearing Date: January 10, 2011 at 6:30 p.m.
Without Oral Argument

15 Defendant.

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17 COMES NOW, CitiMortgage, Inc., by and through its attorneys of record, Bullivant
18 Houser Bailey, P.C., and submits this response in opposition to Plaintiff's Motion for a
19 Temporary Restraining Order.

20 The Ninth Circuit holds "[a] preliminary injunction is appropriate where plaintiffs
21 demonstrate either: (1) a likelihood of success on the merits and the possibility of irreparable
22 injury; or (2) that serious questions going to the merits were raised and the balance of the
23 hardships tips sharply in their favor." *E & J Gallo Winery v. Andina Licores, S.A.*, 446 F.3d
24 984, 990 (9th Cir. Cal. 2006). Here, Plaintiffs have not done this and the motion should be
25 denied. Indeed, Plaintiffs set forth no evidence that they are entitled to restrain the sale.
26 Rather, they merely indicate that they "only recently" made a Qualified Written Request

1 (“QWR”) to CitiMortgage. *See* Carcich Declaration ¶ 2. CitiMortgage will respond to the
 2 QWR appropriately. Again, however, Plaintiffs have set forth absolutely no evidence
 3 tending to establish: (1) a likelihood of success on the merits and the possibility of
 4 irreparable injury; or (2) that serious questions going to the merits were raised and the
 5 balance of the hardships tips sharply in their favor. For this reason, Plaintiffs Motion should
 6 be denied.

7 Plaintiffs’ motion should also be denied for the additional reason that they have failed
 8 to comply with the statutory requirements of Washington’s Deed of Trust Act. RCW
 9 61.24.130 is the governing provision and it makes clear that Plaintiff is not entitled to the
 10 relief sought despite the evidentiary shortcomings. In, pertinent part, that statute provides as
 11 follows:

12 The court ***shall*** require as a condition of granting the restraining
 13 order or injunction that the applicant pay to the clerk of the
 14 court the sums that would be due on the obligation secured by
 the deed of trust if the deed of trust was not being foreclosed:

15 (a) In the case of default making periodic payment of principal,
 16 interest, and reserves, such sums shall be the periodic payment
 of principal, interest, and reserves paid to the clerk every thirty
 days.

17 (b) In the case of default in making payment of an obligation
 18 then fully payable by its terms, such sums shall be the amount of
 19 interest accruing monthly on said obligation at the nondefault
 rate, paid to the clerk every thirty days.

20 Emphasis added. Because Plaintiff has made no such tender, his Motion should be denied.

21 Accordingly, CitiMortgage respectfully requests that this Court enter an order
 22 denying Plaintiffs request for a temporary restraining order.

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1 DATED: January 10, 2011

2 BULLIVANT HOUSER BAILEY PC

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4 By /s/ Charles A. Lyman

5 Charles A. Lyman, WSBA #30495
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9 Attorneys for Defendant CitiMortgage, Inc.

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11 **CERTIFICATE OF SERVICE**

12 I certify under penalty of perjury under the laws of the State of Washington that on
13 January 10, 2011, I electronically filed the foregoing with the Clerk of the Court using the
14 CM/ECF system which will send notification of such filing to all parties of record.

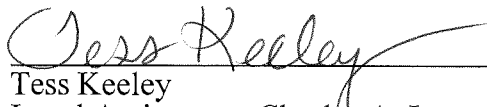
15 I further certify that the following parties received the foregoing document:

16
17 Edward J. Carcich
18 Jennie Vega-Carcich
7512 Big Meadows Road
Chattaroy, WA 99003
19 *pro se plaintiffs*

☐ via first class mail, postage prepaid.
☐ via facsimile.
☒ via hand delivery.

20
21 I declare under penalty of perjury under the laws of the State of Washington at
22 Seattle, Washington, that the foregoing is true and correct.

23 DATED: January 10, 2011

24
25 By 
Tess Keeley
26 Legal Assistant to Charles A. Lyman

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